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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Waycross Division

IN RE:)	Chapter 13 Case
)	Number <u>90-50160</u>
ELIJAH LEROY ANDERSON)	
SANDRA B. ANDERSON)	
)	
Debtors)	
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)	
CECIL HERRIN HOME FURNISHINGS,)	
INC.)	
)	
Movant)	
)	
vs.)	
)	
ELIJAH LEROY ANDERSON)	
SANDRA B. ANDERSON, Respondents)	
and SYLVIA FORD BROWN,)	
CHAPTER 13 TRUSTEE and)	
THE PATTERSON BANK,)	
Objecting Creditor)	

ORDER

Cecil Herrin Home Furnishings, Inc. ("Herrin"), seeks the allowance of a late filed claim in this Chapter 13 proceeding in the amount of Nine Hundred Twelve and 92/100 (\$912.92) Dollars. Herrin claims secured status. The debtors consent. The Patterson Bank, creditor holding an allowed unsecured claim, objects. All pertinent facts are set forth in the file. The debtors filed for relief under Chapter 13 of Title 11 United States Code on May 7, 1990. Herrin

was a listed creditor. The order and notice of Chapter 13 bankruptcy filing and meeting of creditors established a bar date for the filing of proofs of claim as August 27, 1990.

The proposed plan relative to the debt due Herrin provided:

2. From the payments so received, the trustee shall make disbursements as follows:

. . .

(b) secured creditors shall retain liens securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: . . . (2) Cecil Herrin Furniture [no value proposed]. (emphasis original).

By preconfirmation plan modification filed August 20, 1990, pertinent to Herrin, the debtor valued the collateral securing the Herrin debt at One Thousand Forty-Three and 28/100 (\$1,043.28) Dollars. Notice of modification of plan before confirmation was issued with Herrin as a listed creditor. Herrin filed a proof of claim on October 1, 1990 claiming secured status in the net principal balance amount of One Thousand Forty-Three and 28/100 (\$1,043.28) Dollars. By order entered October 10, 1990 the modified plan was confirmed. Under the confirmed plan, holders of unsecured claims would received a dividend of 51.79%. At confirmation, the claim of Herrin was disallowed as late filed. To allow the claim of Herrin with secured status will reduce the dividend to-unsecured creditors from 51.79% to 19.45%. The Patterson Bank, the holder of

an allowed unsecured claim objects.

In its motion, Herrin contends that the first notice it received of the bankruptcy filing was the notice of prepetition modification of the debtors' proposed plan. Herrin was a listed creditor in this Chapter 13 proceeding from its inception and was included on the mailing matrix. The procedures followed by the clerk's office in noticing the debtors' initial filing and the modification before confirmation were identical. All appropriate steps were followed in order to provide Herrin with adequate notice of the debtors' filing, proposed plan and modification of the proposed plan before confirmation.

Whether the motion is considered a motion for enlargement of time authorized for the filing of a proof of claim pursuant to Bankruptcy Rule 3002(c)¹ and 9006² or a request for

¹Bankruptcy Rule 3002(c) provides in pertinent part:

(c) Time for filing. In a . . . chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to 341(a) of the Code [Title 11], except as follows:

(1) On motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of an entity or becomes

reconsideration of a claim pursuant to Bankruptcy Rule 3008³ and 9024⁴ the motion

allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct

²Bankruptcy Rule 9006(b) provides in pertinent part:

(b) Enlargement.

(1) In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was a result of excusable neglect

(3) Enlargement Limited. The court may enlarge the time for taking action under Rules . . . 3002(c) . . . only to the extent and under the conditions stated in those rules.

³Bankruptcy Rule 3008 provides:

Reconsideration of claims. A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

⁴Bankruptcy Rule 9024 provides in pertinent part:

Relief from Judgment or Order. Rule 60 FRCP applies in cases under the Code [Title 11]

must be denied. In a Chapter 3 proceeding such as this case, a

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proof of claim must be filed within the bar date except under certain specific circumstances [see, Bankruptcy Rule 3002(c) (1-4) at n. 1], none of which are applicable here. Citizens and Southern National Bank v. Scott (In re: Scott) Chapter 13 case No. 89-11783 p. 5 (Bankr. S.D. Ga. Augusta Div. Dalis, J. July 6, 1990). The time for filing a proof of claim in a bankruptcy case is indeed a "bar date." Bankruptcy Rule 3002(c) has the force of law. The rule means just what it says. First National Bank Wrens Georgia v. James Clifford Harris (In re: Harris) Civil Action MS-190-02 p. 12 (S.D. Ga. Augusta Div. Bowen, J. March 5, 1990) affirming **bankruptcy** decision First State Bank Wrens. Georgia v. James Clifford Harris (In re: Harris) Chapter 13 case No. 88-11440 (Bankr. S.D. Ga. Augusta Div. January 5, 1990). Bankruptcy Rule 9006(b) (3) clearly establishes that the time limits under Bankruptcy Rule 3002(c) are absolute. Centerbank Mortgage Company v. Bessie Lou Mack (In re: Mack) Chapter 13 case No. 88-11330 p. 3 (Bankr. S. D. Ga Augusta Div. Dalis, J. July 22, 1991). Enlargement of the time to file a proof of claim pursuant to Bankruptcy Rules 3002 and 9006 is not available or appropriate in this case.

In this case, a proof of claim was filed before confirmation but after the bar date established pursuant to Bankruptcy Rule 3002(c). The order of confirmation disallowed the claim as late filed. The claim having been filed and disallowed, the appropriate remedy is pursuant to Bankruptcy Rule 3008 to seek reconsideration of the order disallowing the claim and allow the

claim under the mistake or excusable neglect standard of Bankruptcy Rule 9024. Even considering the motion as one to reconsider the order of confirmation disallowing the claim, granting the relief requested is inappropriate. First State Bank Wrens Georgia v. James Clifford Harris (In re: Harris) Chapter 13 case No. 88-11440 p. 4 (Bankr. S.D. Ga. Augusta Div. Dalis J. January 5, 1990), aff'd, First State Bank Wrens Georgia v. James Clifford Harris, supra. Herrin was a listed creditor in the debtors' schedules and on the mailing matrix. The procedures followed and certificate of mailing filed by the clerk indicates that all appropriate steps were taken to provide this creditor with timely notice of the filing of this case, the meeting of creditors, the bar date established pursuant to Bankruptcy Rule 3002(c), the debtors' proposed plan and the proposed modification of the debtors' plan. The burden for the establishment of a mistake or excusable neglect under Bankruptcy

Rule 9024 rests with the movant. In re: Poteet Const. Co., Inc.,
122 B.R. 616 (Bankr. S.D. Ga. 1990); Wright and Miller, Federal
Practice and Procedure: Civil 2858. From the record of this
case, it appears that timely notice was issued to this creditor.
Herrin's mere allegation that it usually responds immediately upon
being served with a notice of bankruptcy by filing a proof of
claim is insufficient to establish mistake or excusable neglect to
justify reconsideration of the order disallowing its claim.
Movant having failed to establish sufficient cause for
reconsideration of the order disallowing its proof of claim, its
motion to allow late claim is ORDERED denied.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 22nd day of August, 1991.